

E-Filed on 9/20/07

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DOUGLAS F. CARLSON,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

No. C-06-01578 RMW

ORDER DENYING WITHOUT PREJUDICE  
PLAINTIFF'S MOTION TO SUPPLEMENT  
COMPLAINT

[Re Docket No. 29]

Plaintiff Douglas E. Carlson moves for leave to file a supplemental complaint against defendant, United States Postal Service, pursuant to Fed. R. Civ. P. 15(d). Defendant opposes the motion. The court has read the moving and responding papers and finds this matter suitable for disposition without oral argument. For the reasons set forth below, the court denies without prejudice plaintiff's motion for leave to supplement his complaint.

**I. BACKGROUND**

Plaintiff, a self-professed "watchdog" of the defendant, contends that there is "a substantial likelihood that the Postal Service is failing to provide adequate and efficient collection services, as 39 U.S.C. § 3661(a) requires." Plaintiff thus files requests pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, to "obtain information about postal operations and services to enable [him] to advocate for improvements in services to customers." The current action involves plaintiff's motion for leave to supplement his complaint with additional FOIA requests.

**II. ANALYSIS**

Federal Rule of Civil Procedure 15(d) provides that a party may "serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Here, plaintiff moves to supplement his amended complaint, but has not informed the court of what he hopes to add. Federal Rule of Civil Procedure 7(b) requires that motions "state with particularity the grounds therefor." To ensure particularity in the motion for leave to supplement a complaint, a complete "copy of the proposed supplemental pleading must generally be submitted with the motion for leave to file." 71 C.J.S. *Pleading* § 459 (2007). Without a proposed supplemented complaint, the court cannot determine whether the information which plaintiff seeks to add to his existing complaint complies with Rule 15(d).

Nevertheless, rule 15(d) gives district courts broad discretion to permit supplemental pleadings. *Pratt v. Rowland*, 769 F. Supp. 1128, 1131 (N.D. Cal. 1991). Furthermore,

[a]s a tool of judicial economy and convenience, application of the rule is favored. Supplemental proceedings are deemed so useful . . . that the Ninth Circuit has recommended that they be allowed "as a matter of course."

*Id.* Granting leave to supplement pleadings only becomes inappropriate where there is undue prejudice to the defendant. *Keith v. Volpe*, 858 F.2d 467, 475 (9th Cir. 1988). As plaintiff has not received permission to supplement his complaint, there is no danger of unfair prejudice at the moment. Accordingly, the court will deny without prejudice plaintiff's motion and grant plaintiff leave to refile his motion with a proposed supplemented complaint for the court to evaluate.

**III. ORDER**

For the foregoing reasons, the court DENIES plaintiff's motion for leave to supplement his complaint without prejudice and grants plaintiff leave to refile his motion with the proposed supplemental complaint. Plaintiff has thirty (30) days from the date of this order to refile his motion to supplement his complaint. The case management conference set for September 21, 2007 is continued to November 2, 2007.

DATED: 9/20/07



RONALD M. WHYTE  
United States District Judge

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